Supreme Court of the United States

OCTOBER TERM, 1923

No. 369

PANAMA RAILROAD COMPANY,

Plaintiff-in-error

against

ANDREW JOHNSON,

Defendant-in-error

BRIEF SUBMITTED AS *AMICI CURIAE*

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SYNOPSIS OF POINTS.

FIRST.

SECOND.

LAST POINT.

INDEX OF CASES.

MISCELLANEOUS.

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The statute, the validity and constitutionality of which is before this Court in this case, is Section 33 of the Merchant Marine Act, 1920, commonly referred to as the Jones Act.

That section reads as follows (italics ours):

> "Sec. 33. That section 20 of such act of March 4, 1915, be, and is, amended to read as follows:
>
> Sec. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and *in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply;* and in case of the death of any seaman as a result of any such personal

injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and *in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable.* Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

FIRST.

SECTION 33 OF THE MERCHANT MARINE ACT, 1920, IS INVALID AND VOID FOR UNCERTAINTY.

It is well settled by the decisions of this Court, the lower Federal Courts and the State Courts that when a statute is so doubtful and uncertain as to make it difficult or impossible for the person affected to comply with its provisions, it will be held to be of no force and effect.

United States v. *Cohen Grocery Co.*, 255 U. S. 81, 89.

Standard C. & M. Corporation v. *Waugh C. Corp.*, 231 N. Y. 51.

Detroit Creamery Co. v. *Kinnane*, 264 Fed. 845, 850; affirmed 255 U. S. 102.

Louisville & Nashville R. R. Co. v. *Railroad Commissioners of Tenn.*, 19 Fed. 679.

People v. *Briggs*, 193 N. Y. 459.

State v. *State Board of Canvassers*, 159 Wis. 216.

Cook v. *State*, 26 Ind. Appeals 278.
Savage v. *Wallace*, 165 Ala. 572.
Succession of Pizzati, 141 La. 647.
State v. *Crawford*, 177 Pac. 360.
Griffin v. *State*, 218 S. W. 494.
United States v. *Capital Traction Co.*, 34 D. C. App. 592.
Beaumont v. *State*, 57 Tex. Civ. App. 605.

1. It is submitted that the Section under discussion, if it is not a unique piece of Federal legislation, is at least a legislation of an unusual kind, and when it is considered what essentially different instrumentalities of commerce ships are from railroads, the legislation assumes an appearance which is almost grotesque.

Its possible implications distinctly challenge the mind when the Merchant Marine Act is read and one is led to wonder just what duties and obligations are laid on shipowners by such a provision.

2. It must be admitted that provisions of a statute which refer to *rights*, as this does, necessarily involve, if valid, serious statutory changes in the contractual rights which have hitherto existed between shipowners and their seamen employees because, of course, a statute of this kind cannot be merely looked at after litigation arises from the *ex post facto* point of view.

Shipowners do not merely want to know to what extent they are liable after an accident has occurred but want to know *before any accident occurs* what they must do to comply with a statutory regulation giving rights to

seamen and imposing consequent correlative duties on shipowners.

"*The statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees*" to which the Section in question refers may be found, among other places, in a published volume of 1012 pages known as Thornton's Federal Employers Liability which includes the *Employers Liability Acts* of 1906 and 1908, as amended April 5, 1910, 3rd Edition, which includes also the *Safety Appliances Act* of March 2, 1893, amended 1910, the *Boiler Inspection Act* of February 17, 1911, the *Hours of Service Act* of March 3, 1907, and all the rulings and decisions of the Interstate Commerce Commission, as well as of the Courts in connection with the enforcement of these statutes. This book was published in 1916, and to the Acts mentioned must now be added The Adamson Act, *Hours of Service of Employees Act* of September 3 and 5, 1916, Chapter 436, 39 Stat. 721.

3. Whatever may be the propriety of this drag-net form of legislation by reference in a case where the laws referred to are clear and appropriate, we submit that it is absolutely impossible now for a shipowner to determine *a priori*, with these various laws enacted for entirely different conditions before him, just what his duties and obligations under these inappropriate pieces of legislation are.

The test of uncertainty is not whether *after an accident has happened* a Court can spell out some form of liability but whether a shipowner who wishes to comply

with his duties and obligations under the statute can find out what those duties and obligations are when he is preparing a ship for sea or is maintaining it during its operation.

4. There is a further ancillary consideration and that is that there are many acts having to do with the duties and obligations of shipowners to seamen which have been passed from time to time and are now presumably in force for they have not been expressly repealed by the Merchant Marine Act.

There are, for example, the so-called LaFollette Seamen's Act of March 4, 1915, and the statutes containing provisions for the periodical inspection of steam vessels in respect of their hulls, boilers and equipment.

It is difficult, if not impossible, for a shipowner to tell whether the duties imposed on him by the Acts confessedly passed to apply to vessels of the United States contravene in whole or in part the provisions of the "statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees."

5. It must be remembered also in this particular connection that the Merchant Marine Act, 1920, did not have any blanket repealing clause. It was an Act which was passed with the avowed purpose, as stated in its preamble, "*to provide for the promotion and maintenance of the American Merchant Marine.*"

The only Acts repealed or amended were those mentioned in Sections 2, 3, 18, 20, 32, 33 and 38 of the Merchant Marine Act.

Presumably, therefore, all other Acts having to do with vessels of the United States and the relation of American shipowners and seamen remain in full force and effect, and a shipowner who sits down to determine when he is fitting a ship for sea what he must do to comply with the various railroad statutes brought in by Section 33, and with the other statutes of the United States confessedly applying to his situation, will be left in a state of absolute bewilderment unless Section 33 is held void for uncertainty or is held unconstitutional on the grounds hereinafter urged.

SECOND.

THE STATUTE IS UNCONSTITUTIONAL UNDER THE PROVISIONS OF AND VIOLATES ARTICLE 3, SECTION 2 OF THE CONSTITUTION AS INTERPRETED BY THIS COURT BECAUSE IT DESTROYS THE UNIFORMITY OF MARITIME LAW.

It seems to have become a well-settled doctrine that while Congress has power to legislate with respect to matters of admiralty and maritime jurisdiction, the legislation which Congress may pass in respect of such matters must be such as will preserve the uniformity and harmony of the doctrines of maritime law and jurisdiction throughout the United States.

Workman v. *New York City*, 179 U. S. 552, 557-560.

Southern Pacific Co. v. *Jensen*, 244 U. S. 205.

Chelentis v. *Luckenbach S. S. Co.*, 247 U. S. 372.

Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149.

Ex parte State of New York, 256 U. S. 490, 502.

The Lottawanna, 21 Wall 558.

To the same effect is

Sudden & Christenson v. *Industrial Accident Commission*, 188 Pac. Rep. 803.

The present statute trenches on the principle of uniformity of maritime law thus laid down by this Court in the following particulars:

1. It changes the contract between the shipowner and the seaman by introducing into it certain unknown and, apparently unascertainable, elements which have nothing to do with maritime commerce and which are embodied in statutes having to do with a situation wholly different from that involved in sea-borne commerce.

The reason for this assertion is that it gives different rights to seamen against shipowners in the common law courts from the rights which seamen have in the Courts of Admiralty and allows the seaman "at his election" to determine which rights he will invoke.

2. It creates different rights as between shipowners and seamen on American vessels and foreign vessels.

The reason for this assertion is that in the last sentence of the amendment it is provided that "*jurisdiction in such actions shall be under the Court of the district in which the defendant employer resides or in which his principal office is located.*"

If the shipowner is an individual residing in the United States, or a corporation of the United States, their vessels would have to be vessels of the United States.

There are not any foreign vessels whose owners reside or have their principal offices within the United States or within the district of any of our Courts.

Hence, instead of being of assistance in any way to the American Merchant Marine the provisions of Section 33 add to the already heavy handicap under which the American Merchant Marine labors, and allow foreign shipowners, most of whom have not even regular agencies in the United States, to be governed entirely by the old principles of maritime law whether suit is brought in admiralty or in a common-law court.

> *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372.

American seamen on foreign ships would, therefore, not have the same rights as American or foreign seamen on American ships.

Furthermore, this Act is not the kind of an Act which would be enforceable in foreign jurisdictions.

It does not create rights which could possibly be enforceable in any foreign admiralty Court or other foreign Court which might have jurisdiction of a dispute between a shipowner and seaman.

American seamen in foreign ports would not be able to enforce rights under the statute.

3. There is also a threat against the uniformity of our maritime law involved in this act owing to the fact

that it has been held that actions under this Section may be brought in the State Court at law.

Tammis v. *Panama R. R. Co.*, 202 App. Div. (N. Y.) 226.

Lynott v. *Great Lakes Transit Corp.*, 202 App. Div. (N. Y.) 613.

It is quite certain that a jurisprudence which is dependent for its development not only on the Federal Courts, but also on State Courts of forty-eight different States is almost certain to develop on different and probably widely divergent lines so that the obligation of American shipowners may vary appreciably in the ports of every different State in which their ships enter.

4. It is further to be noted that the statute expressly gives a remedy in the common-law Court and not merely a common-law remedy and does not merely save to the suitor his common-law remedy where the common law is competent to give it. In this it differs from the usual saving clause in the judiciary acts.

Chelentis v. *Luckenbach S. S. Co.*, 247 U. S. 372, 383.

The Moses Taylor, 4 Wall. 411, 431.

Knapp, Stout & Co. v. *McCaffrey*, 177 U. S. 638, 644, 648.

As was pointed out in the *Chelentis* case, 247 U. S. at 384, the distinction between rights and remedies is fundamental.

5. The present statute seeks to give a common-law *right* as well as a common-law remedy and if it is allowed to stand and held both valid and constitutional it will constitute what may fairly be described as a malignant growth on our admiralty jurisdiction and maritime law.

6. The real vice of the statute is that it does not give a new uniform right to all seamen enforceable in *any* court having jurisdiction over the parties and the maritime contract involved. It merely purports to give a new right to a seaman against an American shipowner in the court where the American shipowner resides or has its principal place of business.

In *Chelentis* vs. *Luckenbach Steamship Company*, this Court pointed out that the contract of a seaman with a steamship owner was strictly a maritime contract and that all the rights and duties arising thereunder were strictly maritime in their nature and should be uniformly dealt with according to the maritime law in any Court where any question under the contract should be tested.

If the rights and duties of shipowner and seamen under their contract vary in different courts uniformity is destroyed.

In *Ex parte State of New York*, 256 U. S. 490 at page 502, this Court, referring to the cases above cited as to the requirement of symmetry and uniformity in the rules of maritime law, said:

> "The symmetry and harmony maintained in those cases consists in the uniform operation and effect of the characteristic principles and rules of the maritime law as a body of substantive law

operative alike upon all who are subject to the jurisdiction of the admiralty, and binding upon their courts as well. *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372, 382, 384."

If the present statute is sustained, this uniformity would no longer exist.

LAST POINT.

SECTION 33 OF THE MERCHANT MARINE ACT SHOULD BE HELD VOID FOR UNCERTAINTY, OR UNCONSTITUTIONAL AS REPUGNANT TO THE UNIFORMITY OF THE MARITIME LAW.

Respectfully submitted,

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New York, December, 1923.